85-475

Supreme Court, U.S.
FILED
SEP 17 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. ....-....

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1986

RONALD STEVEN MINTZ,
Petitioner,

VS.

STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES (APPELLATE DEPARTMENT)

RONALD STEVEN MINTZ
448 Gretchen Place
Pomona, California 91768-3206
(714) 598-0024
Appellant,
In Propria Persona

Bowne of Los Angeles, Inc., Law Printers. (213) 742-6600.

39pp

I

QUESTIONS PRESENTED FOR REVIEW

1. May a State or Political Subdivision regulate radio communications within a State or such subdivision?

2. If a State or Political Subdivision seizes an FCC type approved radio pursuant to such local regulation, is such a seizure unreasonable, under the 4th Amendment to the U. S. Constitution?

3. If such a Seizure does occur, and the State provides for Judicial Review of such Seizure, can releif be denied by the State because the seizing officer acted in "good faith" when making the Seizure in ignorance of the law under which he Seized the radio equipment?

The parties hereto are petitioner, respondent Superior Court; the People of the State of California (by the District Attorney, counsel) and the Municipal (trial) Court of California, as real parties in interest.

II

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW	1
JUDGMENT SOUGHT TO BE REVIEWED	3
GROUNDS FOR RELIEF	3
STATEMENT OF THE CASE	7
ARGUMENT	14
CONCLUSION	17

TABLE OF AUTHORITIES

Capital Cities Cable v. Crisp	10
Fidelity Federal Savings and Loan Assn. v. de La Cuesta	10
Michigan Canners v. Agricultural Marketing, etc., Bd.	11
United States v. Southwestern Cable Co.	7

III

JUDGMENT SOUGHT TO BE REVIEWED

By its opinion and judgment of July 18, 1985, the Appellate Department of the Superior Court of California, for the County of Los Angeles, affirmed an Order of the Municipal (trial) Court of California denying a motion under California Penal Code §1538.5 to suppress as evidence and return a certain shortwave receiver (or "scanner") which was seized by a law enforcement officer from a vehicle being driven by petitioner. The decision was not reported. A copy is attached to the Appendix herein as Exhibit "A" hereto.

IV

GROUNDS FOR RELIEF

A federal question is presented for review regarding the lawfulness of the Seizure. [Implicit in this question is the lawfulness of the County Ordinance in light of the Communications Act and

effect (if any) of the "good faith" of the law officer who seized the scanner in ignorance of the law.]

Petitioner contends here, as he did below, that the County Ordinance is invalid on its face or as applied because it is preempted by the Communications Act of 1934, as amended, 47 United States Code §151 et seq., inter alia.

A three-judge Appellate Department of the Superior Court affirmed the Order below denying relief under California Penal Code §1538.5, which provides as follows, in pertinent part:

> "A defendant may move for the return of property or to suppress any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds: [¶] (1) The search or seizure without a warrant was unreasonable. . . . "

The court reasoned that the County ordinance was valid; but even if it were not, the seizure was undertaken

in good faith. Thus, it was reasonable.

Petitioner sought review in the California Supreme Court by a petition for writ of habeas corpus on the ground that the County Ordinance was invalid as preempted by the Communications Act of 1934, as amended. A divided Court denied such relief.*

This Court is now asked to review the question of preemption of local regulation of radio communications by such federal Act. More importantly, this Court is asked to decide if the "good faith" of a seizing officer who acts in ignorance of the law under which he seizes things can bar relief in a proceeding in the state court designed to redress such deprivation. Regardless of "good faith", the 4th Amendment to the United States Constitution provides:

---

* Bird, C.J., dissenting.
See Exhibit "B" in the Appendix.

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, . . . "

The basis of the claim of unreasonableness under the 4th Amendment arises from preemption of any local regulation of radio by the Communications Act of 1934, as amended, which provides, in part:

"47 U.S.C. § 151:

"For the purpose of regulating interstate and foreign commerce in communications by wire or radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies . . . there is created a commission to be known as the 'Federal Communications Commission', which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter."

This Commission was given wide responsibility by 47 U.S.C. §152:

> "(a) The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission by energey or radio, which originates and/or is received within the United States, and to all persons engaged in the United States in such communication . . ."

By interpretation, this Court has held that these provisions apply as well to intrastate radio communications. See, e.g., United States v. Southwestern Cable Co., 392 U.S. 157 (1968).

STATEMENT OF THE CASE

Petitioner was driving his car upon a public highway when a police officer observed a shortwave receiver in the car and seized it under color of Los Angeles County Ordinance Ch. 13.10.020, set forth in the state court's Opinion and Order attached in the Appendix.

Petitioner was then charged with the criminal offense of equipping his vehicle

with a shortwave receiver absent authority, an infraction.*

Petitioner immediately challenged the County Ordinance on federal pre-emption grounds, contending that the Ordinance was unconstitutional on its face. His demurrer was overruled and the state Supreme Court denied relief.

Petitioner then renewed his attack upon the ordinance by invoking a hearing under state law to review the reasonableness of the seizure under the 4th Amendment, and his motion was denied.

He sought a pretrial appeal available to review the question under state law (which is final) and the respondent Superior Court affirmed the Order below.

There is no further review available

---

* Formerly a general misdemeanor with a maximum sentence of 6 months imprisonment in the County Jail, it is now a priorable infraction with a fine ranging from $50 for a first offense to $250 for a third offense.

under State law of this question.*

The shortwave receiver was obtained from a local Merchant, Radio Shack, and was imported, sold, and authorized for use by the Federal Communications Commission through a specific Type Acceptance Identification number, issued under the Rules and Regulations of the Federal Communications Commission.

In effect, the County Ordinance requires persons entering the County to remove any shortwave equipment which is capable of receiving certain specified frequencies which have been allocated by the Federal Communications Commission to police and non-police users, primarily in the 30-40 MHz and 150-160 MHz bands, from their "vehicles" (i.e., aircraft, automobiles, and all other vessels.)

* If convicted, the issue is *res judicata*. If acquitted, there is no appeal available. Thus, the instant Petition represents the only review available to Petitioner.

CAVEAT

Although the respondent Court suggests in its formal opinion that the federal question was not timely raised, petitioner, in his formal moving papers in the trial court states, inter alia, as follows:*

> "Defendant has already urged, in his demurrer to the Complaint, that the county Ordinance under which the seizure was effected, is unconstitutional since it is preempted by both the Rules and Regulations of the Federal Communications Commission and by the California Vehicle Code (relating to regulation of equipment used on motor vehicles in the State of California.) Such argument, consisting of three separate memoranda . . . are incorporated herein by this reference."

Notice of Motion, etc., to Suppress Evidence Under § 1538.5 Penal Code, p. 2, under "Memorandum of Points and Authorities", dated March 4, 1984.

---

* Concurrently with the filing of this Petition, petitioner is requesting by letter that the state trial court certify and transmit to this Court the cited portions of the original record in the trial court.

In oral argument at the hearing on the Suppression Motion below, petitioner argued to the trial court:

MR. MINTZ: There is only one point that I wish to clear up.

THE COURT: Yes.

MR. MINTZ: The moving papers indicated that part of the basis of the motion was that the statute [sic] itself was invalid.

MR. JENKINS: [PROSECUTOR] I believe that's not proper grounds in a 1538.5. There's been no evidence presented on any . . .

THE COURT: I don't think so, and in any event, you have the, you have a further remedy on that particular issue because the demurrer was previously denied and then I denied your motion to reconsider . . . Not only were you talking preemption, but I think you were talking unconstitutionality, based on . . .

MR. MINTZ: Well, Your Honor, it is raised in the moving papers, and for the record, I would like to, ah . . . raise it.

THE COURT: I'll be glad to rule on that basis. Alright. I understand what you're saying and if it'll make your record more complete for you I'll just simply say that I find that, ah, this section, that is 13.10.020

> and the related sections in the Los Angeles County Ordinance, is not unconstitutional on its face."

Moreover, the matter incorporated by reference in petitioner's demurrer below squarely presented the precise issue which the respondent court decided against petitioner, and gave the trial court an adequate opportunity to consider it.

The following excerpt is reproduced from petitioner's DEMURRER TO COMPLAINT WITH MEMORANDUM OF POINTS AND AUTHORITIES, filed in the trial court, as incorporated by reference in his subsequent motion to suppress on 4th Amendment grounds:

> "Ronald Steven Mintz demurs to the Complaint in that the Ordinance of Los Angeles County . . . is invalid on its face or as applied. [¶] The basis of such invalidity is that the Ordinance purports to regulate activities which are wholly preempted by federal and state law, as shown with particularity in the attached Memorandum of Points and Authorities. [Page 1]

Petitioner cited Silkwood v. Kerr-McGee Corp. (1984) ___U.S.___ below:

> "If Congress evidences an intent to occupy a given field, any state law falling within that field is preempted."

He also cited United States v. Southwestern Cable Co. (1968) 392 U. S. at 167, to the trial court as follows:

> "The [Federal Communications] Commission's authority to regulate broadcasting and other communications is derived from the Communications Act of 1934, as amended. . . . The Commission was expected to serve as the *'single Government agency'* with 'unified jurisdiction' and regulatory power over all forms of electrical communication. . . . It was for this purpose given a 'broad authority'. As this Court emphasized in an earlier case, the Act's terms, purposes, and history all indicate that Congress 'formulated a unified and comprehensive regulatory scheme for the [broadcasting] industry.' *F.C.C. v. Pottsville Broadcasting Co.*, 309 U.S. 134,137, 60 S.Ct. 437, 439, 84 L.Ed. 656 . . . . "
>
> [Emphasis in original as submitted to the trial court, at p. 8 of the Demurrer.]

There is little question that the question was not only timely raised below, but it is clear that it was vigorously pursued to the State's highest Court as well.

VI

ARGUMENT

In Capital Cities Cable v. Crisp (1984) ___U.S.___, this Court discussed generally the three possible grounds under which federal preemption of state law can be found:

a. An explicit Congressional statement of intention to preempt state law;

b. A clear intent to occupy a field by extensive regulation by Congress or a federal agency;

c. Where the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

See also Federal Savings and Loan Assn. v. de La Cuesta (1982) 458 U.S. 141, cited with approval in Capital, supra. There, as here, an encroachment of federal regulations has occurred:

> "In *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968), the Court found that the Commission had been given 'broad responsibilities' to regulate all aspects of interstate communication by wire and radio by virtue of Sec. 2(a) of the Communications Act of 1934, 47 U.S.C. Sec. 152(a), and that this comprehensive authority included the power to regulate cable communications systems. . . . "

The instant case is on all fours with Southwestern and its progeny; the County regulation under its Ordinance No. 13.10.020 clearly is inconsistent with and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in creating a Federal Communications Commission to assign frequencies and approve equipment for communication by wire and radio. A local regulation such as the one here at issue would enable a political subdivision such as Los Angeles County to forbid the use of television receivers capable of receiving Channel 5 except by a permit

issued by the County, or restrict the use of CB Channels within the County as it wishes.*

See also Michigan Canners v. Agricultural Marketing and Bargaining Board (1984) ___U.S.____, reaffirming Fidelity, supra, where this Court found that a state law "actually conflicts with federal law" on analogous facts.

In this case, the local regulation actually conflicts with federal regulations assigning frequencies in the zone forbidden by Los Angeles County to various uses to serve the general public, and where type-approved receivers are authorized, manufactured, imported and sold in furtherance of the objectives of the Rules and Regulations of the Federal Communications Commission.

---

* Channel 9 has come under such local regulation in some cases by REACT stations.

V

CONCLUSION

The County Ordinance under which petitioner's radio equipment was seized is clearly invalid because it is pre-empted by the Rules and Regulations of the Federal Communications Commission. Since the County Ordinance is invalid on its face, any seizure made pursuant to it is unreasonable as a matter of law. The question remains whether the "good faith" or equivalent under state law stands as an obstacle to the return of the seized equipment pursuant to a procedure in the state criminal justice system created for just such a purpose.

California argues that since the officer seizing the equipment acted in ignorance of the law but in good faith, the equipment cannot be returned to petitioner under the 4th Amendment

to the United States Constitution.

If this Court does not act, then throughout the United States the common people will have their radio equipment subject to illegal confiscation by ignorant, but well intentioned, public officials, acting in "good faith."

It is time for this Court again to act to help the common man from local Government Oppression; as it has done recently in the Cable TV cases and Criminal cases brought by the several states to promote their interests. The right to relief is clear, and the subject matter will affect many.

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

RONALD STEVEN MINTZ
Petitioner *in pro. per.*

APPENDIX

OPINION OF RESPONDENT COURT
(Filed July 18, 1985)

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff and Respondent

vs.

RONALD STEVEN MINTZ

Defendant and Appellant

Opinion and Judgment

Appeal by defendant from Order of the Municipal Court. Roger W. Boren, Judge. ORDER AFFIRMED.

For appellant - In Propria Persona

For Respondent - Ira Reiner,
District Attorney
Donald D. Kaplan,
Deputy District Attorney
Patrick D. Moran,
Deputy District Attorney

-oOo-

[EXHIBIT "A"]

Defendant Ronald Steven Mintz was charged with violation of Los Angeles County Ordinance section 13.10.020 (equipping and operating a vehicle with an unauthorized shortwave radio receiver). Defendant moved to suppress evidence of the receiver which had been seized by the police. The motion was denied and defendant appealed from the order denying the motion.

The People have summarized the facts as follows:

A. Prosecution Case

Officer Douglas Clements of the California Highway Patrol testified that he was on patrol at 10:45 p.m. on December 24, 1983 on Lyons Avenue. At that time he observed appellant's vehicle with its brake lights inoperative. He made a traffic stop for that reason. Clements approached the driver's side of the vehicle and had a conversation with

appellant while his partner, Officer Pravetonne, stood on the right side of the vehicle.

Officer Louis Pravettone testified that he was talking to appellant's female passenger when he noticed on the seat to her left a red light scanning a two inch area. He recognized the device as being a "pocket scanner" because he owns a similar device himself. After seeing the scanner, Pravettone noticed that he could hear broadcasts from the CHP dispatcher from inside appellant's vehicle. He stated that the window was down and he was talking to the female passenger. He also heard transmissions from the Santa Clarita Valley Sheriff's Station coming from the scanner. When there was no radio traffic, he observed the red light scanning over an eight channel frequency range. The transmissions he heard

appeared to be official police business.

Pravettone then asked appellant's female passenger to hand him the scanner, which she did. He then continued to watch and listen to the scanner to verify that it was picking up CHP and Sheriff's transmissions. Pravettone stated that he had "prior knowledge that a scanner in a motor vehicle that picks up police frequencies was illegal." When asked how he had acquired this knowledge, Pravettone replied:

> "THE WITNESS: A. Several years ago I was with a Sheriff's Unit that seized a scanner for a violation of a county ordinance, and it is illegal to have a scanner in a motor vehicle."

In order to be sure that there was still an ordinance applicable to scanners, Pravettone went to his patrol car radio and asked his dispatcher to have a Sheriff's Unit respond and meet him at the location. After doing so, he then

heard, on appellant's scanner, the Sheriff's main dispatcher put out a broadcast to a Santa Clarita Valley Unit to respond to Pravettone's location. After the Sheriff's Unit arrived, Pravettone turned the scanner over to them. He issued a citation to appellant for the defective brake light and for not having a driver's license in his possession.

On cross-examination, Officer Pravettone stated that, at the time of the stop, he did not know the wording of the ordinance. He stated that he does know it now. When asked what the ordinance in question says, the officer respondent: [Sic.]

> "A. The ordinance basically says that frequencies under 40 merder, mercury, megacycles, or whatever, is illegal in a vehicle."

Officer Pravettone indicated that he was not familiar with a radio frequency knows as "470". [Sic.] He indicated that the

CHP dispatch frequency is 42.08. Asked if that referred to magahertz, the officer replied that he did not know. There is also a statewide secondary band for the CHP which is in the "42" area.

William E. Strait, a deputy sheriff, testified on December 24, 1983, he responded to Officer Pravettone's location. Pravettone then gave him the scanner. The scanner was identified in court and marked as People's Exhibit 1.

Strait testified that appellant drove away before the deputy could give him a receipt for the scanner. After he returned to the station, Strait listened to the scanner for a while before booking it into evidence. He heard the sheriff's dispatcher on "Frequency 25" and the CHP dispatcher. Strait testified that the Sheriff's frequency is called "Frequency 25" and it is in the 39 megahertz range.

B. Defense Case.

Appellant recalled Officer Clements to the stand. Officer Clements testified that no one asked appellant if he had a permit for the scanner, nor did it occur to him that there were such things as permits to have scanners in vehicles. He testified that he had very little knowledge of the role of the Federal Communications Commission in licensing radio equipment.

Appellant then recalled Officer Pravettone. Pravettone testified that the car window was closed when he first saw the scanner. After he saw it, he motioned to appellant's female passenger to roll down the window. He identified appellant's passenger in court.

Pravettone was asked what he believed the ordinance in question said at the time of the stop. He replied:

"A. What I believed it said was that no motor vehicle can, the driver of a motor vehicle cannot possess a scanner that's locked into police frequencies."

Pravettone indicated that his current understanding of the ordinance was unchanged. He testified that he was not familiar with the fact that there are permits relating to scanners which are issued by the Sheriff, and he was also unfamiliar with the operation of the Federal Communications Commission. He did not know that the FCC issues licenses to persons to operate shortwave radios. Reading from Los Angeles County Ordinance 13.10.050, appellant asked if Pravettone was aware that the ordinance in question did not apply to "any vehicle owned or operated by a person or association of persons licensed by the Federal Communications Commission to operate a fixed or mobile shortwave station." Pravettone replied:

"A. I am not familiar with any ordinance about permits of the County of Los Angeles."

Pravettone testified that the scanner was not attached to appellant's vehicle but was lying on the front seat.

Asked if he knew what frequency the scanner operates on, Pravettone replied that it was a "hi-low frequency scanner." He stated that "hi-low" referred to different frequencies, low being around forty megahertz and high being "around one-fifty area."

C. Ruling

The court denied the suppression motion, finding that the officers reasonably believed that the scanner was in violation of a county ordinance, from their prior experience. The court also noted that the device itself contained a label indicating that it operated within a range of 30 to 50 megahertz, as well as

other ranges. Appellant objected to the court considering [sic.] what was on the label.

D. Constitutionality of the Ordinance.

After the court denied the suppression motion, appellant indicated that he wished to argue that the seizure was unreasonable because the ordinance was invalid. There was an objection to this argument as not being the proper ground for a Penal Code section 1538.5 motion. The court agreed, noting that appellant had raised that issue in a demurrer and had further made a motion to reconsider the demurrer. After further argument by appellant, the court ruled that Los Angeles County Ordinance is not unconstitutional on its face.

On appeal defendant raised two contentions which we conclude may not be raised on an appeal from a ruling made

under Penal Code section 1538.5. These two contentions are that the ordinance with which defendant is charged as having violated is "preempted by the rules and regulations of the Federal Communications Commission [and] by the California Vehicle Code." Claims made by a defendant under Penal Code section 1538.5 are "limited to search and seizure issues." [People v. Campa (1984) 36 Cal. 3d 870, 885.) Therefore, "a section 1538.5 motion may be grounded only upon claimed unconstitutional violations unless these involve unconstitutional [sic.] search and seizure." (People v. Superior Court (Scott) (1980) 112 Cal.App.3d 602, 605.) The court in Scott further stated:

> [2]In a ciminal prosecution, suppression of evidence is required only when the evidence has been obtained through deprivation of constitutional rights, transgression of statutes embodying constitutional standards or where specifically required by statute. (*Armenta v. Superior Court* (1976) 61 Cal.App.3d 584, 594 [132 Cal.Rptr. 586].)

(Ibid., fn. 2.)

"Whether [a statute upon which a police officer relied to search and seize evidence] is constitutionally infirm . . . is not relevant to the issue [of the legality of the search and seizure]. The question . . . is probable cause, not guilt or innocence on the substantive charge of violating that [statute.]" (People v. Gibbs (1971) 16 Cal.App.3d 758, 762; Michigan v. DeFillippo (1979) 443 U.S. 31, 36-38.) "[A] postarrest judicial declaration of unconstitutionality of the statute under which an arresting officer acted would not automatically vitiage good faith or probable cause on the part of the arresting officer." Mann v. Mack (1984) 155 Cal.App.3d 666, 676, fn. 4.)

Thus, in the instant case the contentions relating to preemption

are separate from the issue of whether the receiver was seized as the result of an illegal search or seizure. Nevertheless, we also conclude that there was no illegal search because the receiver and the transmissions from it [sic.] were in plain view and hearing from a point where the police officer had the right to be after stopping defendant for an unrelated traffic violation. (See Lorenzana v. Superior Court (1973) 9 Cal.3d 626, 636.) The issue of preemption is more properly addressed by way of a demurrer under Penal Code section 1004.

The third and final contention raised by defendant is that "the seizure was unreasonable because the seizing officers did not know the law." Los Angeles County Ordinance section 13.10.020 states:

> Except as provided in Section 13.20.050 of this chapter, every person who, without obtaining a permit from the sheriff or from the forester and fire warden authorizing him

> to do so, equips any vehicle with, or operates any vehicle equipped with, a shortwave receiver, is guilty of an infraction.

Los Angeles County Ordinance 13.10.010 defines "shortwave radio receiver" as follows:

> As used in this chapter, "shortwave radio receiver" means and includes any radio receiver or other device capable of receiving messages or communications on any radio transmission station operating on a frequency between 1600 kilocycles and 2500 kilycycles, or on a frequency between 30 megacycles and 40 megacycles, or between 150 megacycles and 160 megacycles.

Defendant argues that the receiver was seized "under the mistaken impression that the ordinance made it unlawful to receive 'police' transmissions, and without knowledge of the exception contained in the ordinance for holders of F.C.C. permits." Defendant states that if the police had asked if he had an F.C.C. permit then they would have been told that he did have one. Defendand further argues that the testimony

given at the hearing to suppress stating that the "Sheriff's Dispatch broadcasts were also heard on 39.08 MHz cannot be considered to justify the seizure in view of the fact that the scanner is not equipped for, and cannot receive, such frequency. . . ." We reject defendant's contention. "A proceeding under section 1538.5 to suppress evidence is a full hearing on the issues before the superior court [sic] sitting as a finder of fact. (People v. Superior Court (Peck) 10 Cal. 3d 645, 649. [111 Cal.Rptr. 565, 517 P.2d 829]; People v. West (1970) 3 Cal.3d 595, 602 [91 Cal.Rptr. 385, 477 P.2d 409].)

The power to judge credibility of witnesses, resolve conflicts in testimony, weigh evidence and draw factual inferences, is vested in the trial court. On appeal all presumptions favor proper exercise of that power, and the trial

court's finding -- whether express or implied -- must be upheld if supported by substantial evidence. (People v. Gale (1973) 9 Cal.3d 788, 792 [108 Cal.Rptr. 852, 511 P.2d 1204]; People v. Lawler (1973) 9 Cal.3d 156, 160 [107 Cal.Rptr. 13, 507 P.2d 621].)" (People v. Superior Court (Keithley) (1975) 13 Cal.3d 406, 410.)

Police Officer Pravettone testified that from past experience he believed it was illegal to have a radio receiver that picked up police frequencies. This provided Pravettone with sufficient probable cause to believe that the law had been violated even though he did not know the exact wording of the ordinance. "[T]he test for determining whether reasonable cause exists . . . is objective and not dependent upon the . . . officer's subjective good faith

or the accuracy of his knowledge of the ephemeral law of arrest, search and seizure." (People v. Superior Court (Johnson) (1971) 15 Cal.App.3d 146, 152.) The Johnson court further stated that a reviewing court's "task is to determine if under [the facts] there was reasonable cause to arrest the defendant for any crime" and not just the crime the defendant was told by the police for which he was being arrested. [Sic.] (Id., at pp. 152-153.) Likewise, in the instant case if the police had sufficient facts before them to believe defendant was violating a law restricting the possession of radio receivers, then lack of knowledge of the exact wording of the subject ordinance would not make the officer's conduct illegal. We decline defendant's invitation to examine the receiver in order to determine whether it has "a crystal for

39.08 MHz . . . ." As the request for such an examination was not made at the hearing to suppress, the request may not be made for the first time on appeal. (See People v. Superior Court (Simon) (1972) 7 Cal.3d 186, 198.) The trial court made a credibility determination regarding Pravettone's testimony that he heard the sheriff's frequency on the receiver when the court observed that on the back of the receiver "it . . . indicates a range of from 30 to 50 megahertz . . . ." Our function as a reviewing court is not to weigh the testimony given at the suppression hearing. (Keithley, supra, 113 Cal.3d at 410.) The issue of whether defendant actually violated the ordinance is not raised in a 1538.5 hearing since such a hearing is not addressed to the guilt or innocence of the accused. (People v. Ahern (1984)

157 Cal.App.3d 27, 33.) "Reasonable cause . . . need not be established by proof beyond a reasonable doubt. If reasonable cause exists, the fact that no crime was committed or the arrested person was subsequently found not guilty of the specific charge for which he was arrested does not affect the legality of the arrest and search." (Johnson, supra, 15 Cal.App.3d at p. 154.)

The order denying defendant's motion to suppress is affirmed.

REESE, Judge

We concur.

COOPERMAN, Presiding Judge

SHABO, Judge

ORDER DENYING WRIT OF HABEAS CORPUS

(Filed November 14, 1984)

Criminal No. 23968

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

IN BANK

In re MINTZ, RONALD STEVEN

on Habeas Corpus

Petition for writ of habeas corpus DENIED.

Bird, C.J., is of the opinion the petition should be granted.

BIRD, Chief Justice

[EXHIBIT "B"]